

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMIE MCKNIGHT	:
	:
	:
Plaintiff	:
vs.	:
	:
AMAZON.COM, INC. ET. AL	:
	2:23-cv-01449
	:
Defendants	:

**PLAINTIFF, JAMIE MCKNIGHT'S SUR REPLY TO AMAZON'S
OPPOSITION TO MOTION FOR REMAND**

The Musitief Firm LLC now puts forth this Sur Reply in further support of Plaintiff's Motion to Remand this matter to the Philadelphia Court of Common Pleas:

This Honorable Court should grant Plaintiff's Motion to Remand as it is clear that Defendant Tyrese Skinner is a Citizen of the Forum State and Plaintiff is currently in the process of completing personal service on him.

The case of Swindell-Fillaggi vs. CSX Corp., 922 F. Supp. 2d 514 (ED. PA 2013), 2013 U.S. Dist. Lexis 17194 is directly on point and is the binding precedent applicable in the instant matter. The "forum defendant rule" provides that an action cannot be removed on the basis of diversity jurisdiction " if any of the parties in interest properly joined and served as defendants is a Citizen of the State in such an action is brought. 28 USC Sec.1441(b)(2). In Swindell-Fillaggi, the corporate defendant, CSX removed the case to federal court arguing that removal was proper since another Corporate Defendant, Conrail who resided in the forum state hadn't been properly served until the actual day the notice of removal was filed. The Honorable Michael Bayson found that the statute wasn't to be read literally and ordered Remand to State Court. Swindell-Fillaggi vs. CSX Corp., 922 F. Supp. 2d 514 (ED. PA 2013). The Swindell-Fillaggi Court followed the

rationale established in Allen vs. GlaxoSmithKline PLC, No. 07-5045,-2008 U.S. Dist. Lexis 42491, 2008 WL 2247067 at 4 (E.D. Pa. May 30 2008). In Allen, the court held that in-state defendants cannot rely on the “joined and served” requirement to justify removal. The Court based this conclusion on the “logic and policy” of the forum defendant rule in general, and the “joined and served” requirement in particular. Since “the intent behind the “joined and served” requirement is to avoid gamesmanship,” the Court concluded “it would be especially absurd to interpret the same “joined and served” requirement to actually condone a similar kind of gamesmanship from defendants-removing before service, in order to later claim federal jurisdiction, for lack of proper service.” Allen, 2008 U.S. dist. LEXIS 42491, 2008 WL 2247067, at *4.

In the instant matter, Plaintiff’s Complaint was filed on April 10, 2023 and shortly thereafter on April 19, 2023, service was attempted on Defendant, Tyrese Skinner at 4531 North 17th Street, Philadelphia, Pa 19140, by Process Server, Daniel Guida. Defendant was not able to be served at that time. Attempted Service dated April 19, 2023, is attached hereto as Exhibit “A”. Thru various skip traces/online searches, Plaintiff’s Counsel was able to obtain a new address for Defendant, Tyrese Skinner at 4531 North 13th Street, Philadelphia, Pa 19140. Process servers are currently enroute to serve Defendant Skinner. See a copy of the email attached hereto and marked as Exhibit “B”. To allow Amazon to remove on a slight technicality that Defendant Skinner wasn’t served before Amazon was served would clearly circumvent the clear intent of 28 USC Sec.1441(b)(2) and violate the forum defendant rule. Thus, Amazon’s removal in the instant matter is invalid, and this Honorable Court should remand promptly to Philadelphia Court of Common Pleas.

RESPECTFULLY SUBMITTED,
THE MUSITIEF FIRM, LLC

BY:

FEEDA R. MUSITIEF, ESQUIRE
THE MUSITIEF FIRM, LLC
1333 Race Street
Philadelphia, Pa 19103
215-703-5400
Email – fm@musitief.com

Dated:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMIE MCKNIGHT	:
	:
	:
Plaintiff	:
vs.	:
	:
AMAZON.COM, INC. ET. AL	:
	2:23-cv-01449
	:
Defendants	:

CERTIFICATE OF SERVICE

I do hereby certify that service of a true and correct copy of *Plaintiff's Sur-reply to Amazon's Opposition to Motion for Remand*, was electronically filed enabling counsel of record to retrieve a copy. It is further certified that the following unrepresented Defendants were forwarded a copy at the following addresses via regular mail, although it is unknown and unconfirmed if received:

Ryan O'Neil, Esquire
Erin W. Grewe, Esquire
Andrew Notaristefano, Esquire
CAMPBELL, CONROY & O'NEIL, P.C.
1205 Westlakes Drive, Suite 330
Berwyn, Pa 19312

Tyrese Skinner
4531 North 13th Street
Philadelphia, Pa 19140

Marissa Pembroke, Esquire
Patrick McDonnell, Esquire
MCDONNELL& ASSOCIATES, P.C.
Metropolitan Business Center
860 First Avenue, Unit 5B
King of Prussia, Pa 19406

Francis J. Grey, Jr. Esquire
RICCI TYRRELL JOHNSON & GREY
1515 Market Street
Suite 1800
Philadelphia, Pa 19102

RESPECTFULLY SUBMITTED,

THE MUSITIEF FIRM, LLC

BY:

FEEDA R. MUSITIEF, ESQUIRE
THE MUSITIEF FIRM, LLC
1333 Race Street
Philadelphia, Pa 19103
215-703-5400
Email – fm@musitief.com

Dated: 5-12-23

EXHIBIT “A”

THE MUSITIEF FIRM, LLC
BY: FEEDA R. MUSITIEF, ESQUIRE
Attorney I.D.: 202768
1333 RACE STREET
PHILADELPHIA, PA 19107
215-703-5400
Email: FM@musitief.com

ATTORNEYS FOR PLAINTIFF

MAJOR JURY

JAMIE MCKNIGHT	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
	:	
Plaintiff	:	
vs.	:	APRIL TERM, 2023
	:	
AMAZON.COM, INC. ET. AL	:	NO.: 898
	:	
Defendants	:	

AFFIDAVIT OF NON SERVICE

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF PHILADELPHIA :

I, Feeda R. Musitief, Esquire, being duly sworn according to law, deposes and says that on April 19, 2023, attempted service was made of a true and correct copy of the Complaint in the above captioned matter upon Defendant, Tyrese Skinner, 4531 North 17th Street, Philadelphia, Pa 19140 by Process Server, Daniel Guida. Service was not made as "Unknown" evidenced by copy of the Affidavit attached as Exhibit "A".

THE MUSITIEF FIRM, LLC

BY:

FEEDA R. MUSITIEF, ESQUIRE

AFFIDAVIT OF NON-SERVICE

Commonwealth of Pennsylvania

County of Philadelphia

Common Pleas Court

Case Number: APR/L 2023 0898

Plaintiff:

JAMIE MCKNIGHT

vs.

Defendant:

AMAZON, ET AL

For:
MUSITIEF FIRM, LLC
1333 RACE STREET
PHILADELPHIA, PA 19107

Received by COURT HOUSE LEGAL SERVICES, INC. to be served on **TYRESE SKINNER, 4531 NORTH 17TH STREET, PHILADELPHIA, PA 19140**.

I, Daniel Guida, being duly sworn, depose and say that on the **19th day of April, 2023** at **2:55 pm**, I:

NON-SERVED - DILIGENT: after due search, careful inquiry and diligent attempts was unable to serve the **COMPLAINT** on **TYRESE SKINNER** for the reasons detailed in the comments below.

Additional Information pertaining to this Service:

UNKNOWN. RUTH BROWN SAID HE HAS LIVED THERE WITH HER MOTHER FOR 40 YEARS. SKINNER IS NOT KNOWN

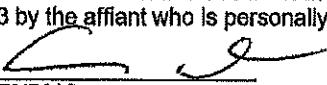
I am over the age of 18 and have no interest in the above action.



Daniel Guida
Process Server

COURT HOUSE LEGAL SERVICES, INC.
112 Haddontowne Ct, Ste. 304
Cherry Hill, NJ 08034
(856) 428-4700

Our Job Serial Number: CHI-2023003984
Ref: MCKNIGHT/AMAZON, ET AL


NOTARY PUBLIC

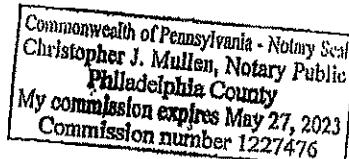


EXHIBIT “B”



Donna Floody <df@musitief.com>

JAMIE MCKNIGHT V. AMAZON.COM

3 messages

Donna Floody <df@musitief.com>

To: courthouselegal@aol.com, Feeda Musitief <fm@musitief.com>

Tue, May 9, 2023 at 3:03 PM

Good Afternoon:

Please serve Defendant, Tyrese Skinner at 4531 N. 13th Street, Philadelphia, Pa 19140 with the Reinstated Complaint.

Thank you.

--
Donna M. Floody, Secretary
Feeda R. Musitief, Esquire
1333 Race Street
Philadelphia, Pa. 19107
Office (215) 703-5400
Fax (215) 703-5402
Email-df@musitief.com

TIMED STAMPED PREACIPE TO REINSTATE COMPLAINT.pdf
952K

courthouselegal@aol.com <courthouselegal@aol.com>

Reply-To: courthouselegal@aol.com

To: "df@musitief.com" <df@musitief.com>, "fm@musitief.com" <fm@musitief.com>

Tue, May 9, 2023 at 3:05 PM

Thanks,
Received,

Matt

Court House Legal Services
112 Haddontowne Court, Ste 304
Cherry Hill, NJ 08034
856-428-4700
800-242-9779
[Quoted text hidden]

Donna Floody <df@musitief.com>

To: courthouselegal@aol.com

Cc: "fm@musitief.com" <fm@musitief.com>

Tue, May 9, 2023 at 3:13 PM

Thank you.

[Quoted text hidden]



20230425141614

Spartan Detective Agency, Inc.
P.O. Box 1414 - Union, New Jersey 07083
Phone: (877) SDA-2009 (877-732-2009)
Fax: (888) 224-4405 Tax ID 22-1927841
www.SpartanPI.com



Confidential Report **20230425141614**

THE MUSITIEF FIRM, LLC
1333 RACE STREET
PHILADELPHIA PA 19107

Regarding: SKIP TRACE
On: TYRESE SKINNER
Date: 04/28/2023

Attn: FEEDA R. MUSITIEF, ESQ.
Phone: 2157035400
Fax: 2157035402
E-mail: FM@MUSITIEF.COM

As per your request, a SKIP TRACE

On TYRESE SKINNER
4531 NORTH 17TH STREET
PHILADELPHIA PA 19140

was diligently conducted.

Docket/File#: PHILADELPHIA COUNTY; APRIL TERM, 20
Venue: PHILADELPHIA
Claim#:
Plaintiff: JAMIE MCKNIGHT
Defendant: AMAZON.COM. INC. ET AL

**We have located this data with the information previously provided by you. Our findings are indicated below:
WE WERE UNABLE TO LOCATE A CURRENT ADDRESS.
THERE ARE NUMEROUS INDIVIDUALS WITH THIS NAME.**

THE ENTITY IS UNKNOWN AT THE GIVEN ADDRESS.

**WE NEED MORE INFORMATION (SSN, DOB, PRIOR ADDRESS...) TO FURTHER INVESTIGATE.
IF THERE IS NO OTHER INFORMATION AVAILABLE, THEN WE RECOMMEND A POSTAL FORWARDING SEARCH. (PLEASE BE ADVISED POSTAL FORWARDING SEARCHES MAY TAKE UP TO 120 BUSINESS DAYS). PLEASE ADVISE.**

THE DATA CONTAINED IN THIS REPORT HAS BEEN OBTAINED BY APPLYING THE SUBJECT'S NAME AND/OR SOCIAL SECURITY NUMBER FOR VERIFICATION.
ALL SUBJECT INFORMATION HAS BEEN PROVIDED BY THE CLIENT PREVIOUS TO THIS SEARCH. IF THIS IS A BANK SEARCH PLEASE NOTE THAT THIS SUBJECT MAY HAVE OTHER BANK ACCOUNTS WITH OTHER BANKS, WHICH DID NOT COME UP ON THIS SEARCH. ALL OF THE ABOVE DATA IS FURNISHED IN RESPONSE TO AN INQUIRY AND HAS BEEN OBTAINED FROM SOURCES DEEMED RELIABLE, THE ACCURACY OF WHICH THIS ORGANIZATION DOES NOT GUARANTEE. THE INQUIRER IS TO BE PERSONALLY RESPONSIBLE FOR ANY MISUSE OF THE ABOVE INFORMATION.
SHOULD YOU HAVE ANY QUESTIONS PLEASE DO NOT HESITATE TO CONTACT US!